UTAH TRAIL MACHINE ASSOCIATION

IBLA 96-408 Decided January 6, 1999

Appeal from a Decision Record of the District Manager, Arizona Strip District, Bureau of Land Management, approving the Arizona Trail-Buckskin Mountain Passage Recreation Project Plan. AZ-010-96-10.

Motions to dismiss denied; decision affirmed.

1. Federal Land Policy and Management Act of 1976: Land- Use Planning--Federal Land Policy and Management Act of 1976: Surface Management--Public Lands: Multiple Use

   BLM's decision to construct a trail limited to nonmotorized use will be affirmed when Appellant fails to establish that the decision was arbitrary and capricious, or violated the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101-12213 (1994).

APPEARANCES: Rainer Huck, President, Utah Trail Machine Association, Salt Lake City, Utah, for the Utah Trail Machine Association; Richard R. Greenfield, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The Utah Trail Machine Association (Appellant) has appealed from a March 5, 1996, Decision Record (DR) of the District Manager, Arizona Strip District, Bureau of Land Management (BLM), approving the Arizona Trail- Buckskin Mountain Passage Recreation Project Plan (the Plan).

The Plan provides for construction of a 9-mile-long segment of the Arizona Trail, a system of connected trails for nonmotorized use that will eventually extend for 750 miles from the Arizona-Mexico border to the Arizona-Utah border. The trail segment, known as the Buckskin Mountain Passage, extends across public lands situated in Ts. 41 and 42 N., R. 3 E., Gila and Salt River Meridian, Coconino County, Arizona, and runs south from the Arizona-Utah border to the northern boundary of the Kaibab National Forest. The area crossed by the trail segment is located mostly in BLM's Canyons/Plateaus of the Paria Resource Conservation Area (RCA), a special management area within its Vermillion Resource Area in the Arizona Strip District.

Appellant's sole objection to the Plan is that motorcycles are excluded from using the trail segment. It contends that the Plan is discriminatory because it allows only muscle-powered vehicles, and because it arbitrarily and capriciously excludes motorcycle use, even though the Plan "has made no showing that motorcycles have any effects on the environment different than bicycles." (Notice of Appeal at 1.) Appellant also contends that by limiting access to muscle-powered users only, BLM violated the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101-12213 (1994), because "all citizens who do not have the health, strength, endurance, or other capacity to hike or pedal for long distances are automatically excluded." Id. Finally, Appellant contends that BLM ignored its comments dated January 26, 1996, which were submitted in response to BLM's notice of its proposed approval of the Plan.

Before we address the merits of Appellant's appeal, several procedural issues raised by BLM must be addressed. First, BLM moves that the appeal be dismissed for failure to serve a copy of the notice of appeal and statement of reasons for appeal on the relevant office of the Solicitor, as required by 43 C.F.R. § 4.413(a). We deny the motion. The Board has long held that an appellant's failure to properly serve the Solicitor's office only renders its appeal subject to summary dismissal under 43 C.F.R. § 4.413(b), and, in the absence of any showing that BLM has been prejudiced thereby, will not result in dismissal. Defenders of Wildlife, 79 IBLA 62, 66-67 (1984). We find no prejudice to BLM in this case. The Answer filed by BLM indicates it had ample opportunity to respond to all of Appellant's arguments and has done so.

Second, BLM moves that the appeal be dismissed because Appellant failed to demonstrate that it has standing, under 43 C.F.R. § 4.410(a), to appeal from the District Manager's March 1996 DR. We also deny this motion. Clearly, Appellant is a party to the case under 43 C.F.R. § 4.410(a) by virtue of its January 29, 1996, comments during the environmental review process. See Missouri Coalition for the Environment, 124 IBLA 211, 216 (1992). The only question is whether Appellant has a legally cognizable interest under that regulation which is likely to be adversely affected by BLM's decision. See Missouri Coalition for the Environment, 124 IBLA at 216. In its January 1996 comments, Appellant based its objection to the exclusion of motorcycles from the trail segment on the fact that it "represents the interests of the 200,000 Utahn's who own and operate Off Highway Vehicles." (Letter to BLM, dated Jan. 26, 1996.) We conclude that those members represented by Appellant who have an interest in riding their motorcycles on the trail segment, but are prohibited from doing so, have a legally cognizable interest that is adversely affected by BLM's decision.

[1] Sections 202(e) and 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1712(e) and 1732(b) (1994), authorize BLM generally to manage and regulate the use of the public lands. In doing so, BLM is specifically required by sections 102(a)(7) and 302(a) of FLPMA, 43 U.S.C. §§ 1701(a)(7) and 1732(a) (1994), to manage such lands under the principle of multiple use, which is defined in part as "the management of the public lands and their various resource values so that

they are utilized in the combination that will best meet the present and future needs of the American people." 43 U.S.C. § 1702(c) (1994). It is well settled that the principle of multiple use does not preclude BLM from excluding a particular use from part of the public lands. See California Association of Four-Wheel Drive Clubs, 38 IBLA 361 (1978), aff'd, California Association of Four-Wheel Drive Clubs, Inc. v. Andrus, No. 79-1797-N (S.D. Cal. Aug. 5, 1980), aff'd, (10th Cir. Jan. 22, 1982). The essence of the multiple-use mandate is simply to require a choice regarding the appropriate balance to strike between competing resource uses, recognizing that not every possible use can take place on any given area of the public lands at any one time. Thus, there must necessarily be a trade-off between competing uses.

In this case, where there is no authority requiring that motorcycle use be permitted on the trail segment, BLM is authorized to exercise its discretion, under sections 202(e) and 302(b) of FLPMA, to limit vehicular use of the trail to nonmotorized means. Such a decision will be overturned by the Board only when it is arbitrary and capricious, and thus not supported on any rational basis. See Bowman Transportation v. Arkansas-Best Freight System, 419 U.S. 281, 285-86 (1974). Moreover, the burden is upon an appellant to demonstrate, by a preponderance of the evidence, that BLM committed a material error in its factual analysis, or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors, and acted on the basis of a rational connection between the facts found and the choice made. See Bowman Transportation v. Arkansas-Best Freight System, 419 U.S. at 285. That burden is not carried simply by expressions of disagreement with BLM's analysis and conclusions. Larry Griffin, 126 IBLA 304, 308 (1993).

Appellant has failed to meet its burden of proof. The record is replete with evidence that BLM's decision was based on a rational exercise of its discretion. In its January 1992 Arizona Strip District Resource Management Plan, BLM provided that within the RCA, recreation opportunities associated more with nonmotorized uses would be emphasized. (Vermillion Resource Area Implementation Plan, dated July 1992, at II-14.) Such emphasis is reflected in the objectives of the Plan:

> The project will * * * provide nonmotorized, semi-primitive trail experience opportunities for mountain bikers, hikers, equestrians, and cross-country skiers in moderate to predominantly natural settings, with moderate to excellent opportunities to experience solitude, risk, and challenge, and with moderate to low evidence of management presence in the form of rules, signs, and onsite personnel along a 9-mile corridor over the life of the trail.

(Plan at 1.)

Further, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(2)(C) (1994), BLM prepared an Environmental Assessment (EA) (AZ-010-94-13) on February 29, 1996. In its EA, BLM noted that use of the trail by motorized vehicles

would "greatly diminish opportunities for visitors to experience a semi-primitive, non-motorized trail setting." (EA at 10.)

Accordingly, we conclude that BLM's decision to exclude motorcycle use of the trail segment was not arbitrary and capricious.

Next, we turn to Appellant's argument that BLM's decision violates the ADA. That act prohibits discrimination against disabled Americans in employment, public service, and public accommodations. We have noted a number of times in the past that any party challenging a BLM decision must establish standing with respect to each aspect of the decision the individual seeks to challenge. See, e.g., Owen Severance, 145 IBLA 70, 73 (1998); Save Our Ecosystems, 85 IBLA 300, 302 (1985). In this case, Appellant has not even alleged that any of its members fall within the category of citizens sought to be protected by the ADA. Its appeal is subject to dismissal on the ADA issue for that reason. Nevertheless, for purposes of our decision we assume that Appellant includes within its membership such citizens because, even if it does, it has failed to point to any specific provision of the ADA allegedly violated by BLM in limiting the trail segment to nonmotorized use.

Finally, contrary to Appellant's assertion, we find that BLM did not ignore Appellant's January 29, 1996, comments. BLM solicited such comments by letter dated January 22, 1996, outlining the proposed action and alternatives thereto, and offering to provide a copy of the draft EA on request. It therefore afforded an opportunity to Appellant and others to comment on the accuracy and completeness of the draft EA. Moreover, BLM notes in its final EA that all comments were considered and analyzed, including the comments of those who "wanted to include the use of motorcycles." (EA at 15.)

Therefore, we conclude that BLM's March 5, 1995, decision was appropriate and must be affirmed. To the extent Appellant has raised arguments not specifically addressed herein, they have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's motions to dismiss are denied, and the decision appealed from is affirmed.

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John H. Kelly
Administrative Judge

I concur:

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Bruce R. Harris
Deputy Chief Administrative Judge